

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

RECEIVED

OCT 10 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Jurisdictional Separations Reform and )  
Referral to the Federal-State Joint Board )

CC Docket No. 80-286

**REPLY COMMENTS OF PAC-WEST TELECOMM, INC.  
AND RCN TELECOM SERVICES, INC.**

Pac-West Telecomm, Inc. ("Pac-West") and RCN Telecom Services, Inc.

("RCN"), by undersigned counsel, hereby submit their reply comments pursuant to the Public Notice in this proceeding.<sup>1</sup> The Commission sought comment on the Federal-State Joint Board's Recommended Decision to institute a five-year freeze of all Part 36 category relationships and allocation factors for price cap carriers, and a freeze of all allocation factors for rate-of-return carriers. The Joint Board also proposed that, if the Commission finds that traffic to Internet service providers ("ISPs") is jurisdictionally interstate in connection with its remand proceeding of its *Dial-up Order* regarding intercarrier compensation for ISP-bound traffic,<sup>2</sup> it should freeze the local dial equipment minutes ("DEM") factor at a level that reflects the increased usage of the local network for Internet traffic. Pac-West and RCN agree with WorldCom, Inc. that the DEM factor should not be scaled back to adjust for recent growth in traffic bound to ISPs.<sup>3</sup> There are

<sup>1</sup> *Comment Sought on Recommended Decision by Federal-State Joint Board on Jurisdictional Separations*, Public Notice, CC Docket No. 80-286 (rel. Aug. 15, 2000).

<sup>2</sup> *In re Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 ("*Dial-Up Order*").

<sup>3</sup> WorldCom Comments (Sep. 25, 2000) at 1.

No. of Copies rec'd 04  
List ABCDE

a number of reasons why the Commission should do nothing at this time regarding the separations treatment of ISP-bound traffic.

First, the Joint Board's Recommended Decision is internally inconsistent. The Recommended Decision makes two offsetting proposals: first, it proposes that the local DEM factor should be set at 95% in order to estimate a reduction that would be "warranted in light of any effects that Internet usage has had on jurisdictional allocations or consumers."<sup>4</sup> At the same time, the Joint Board proposes that the Commission *not* address the treatment of Internet traffic for separations purposes at this time.<sup>5</sup> The Commission cannot reasonably do both at the same time. It cannot adjust an allocation factor downward to reflect Internet usage, while also deferring consideration of the impact of Internet usage on jurisdictional separations. To maintain consistency, and preserve the status quo as a freeze of jurisdictional allocation factors is intended to do, there should be no partial adjustment to DEM weighting. It makes far more sense to defer all consideration of jurisdictional separations related to Internet traffic, including the DEM rollback, to a later date.

Oddly, Verizon, Qwest, and BellSouth agree with Pac-West and RCN on this issue. Even though Verizon, Qwest, and BellSouth argue repeatedly in other proceedings that ISP-bound traffic is jurisdictionally interstate in order to avoid their reciprocal compensation obligations to CLECs, and also that ISP-bound traffic cannot be "treated as local" for the purposes of reciprocal compensation,<sup>6</sup> they argue here that ISP-bound

---

<sup>4</sup> Recommended Decision, FCC 00J-2 (rel. July 21, 2000) at para. 29.

<sup>5</sup> *Id.* at n.68.

<sup>6</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68 ("Reciprocal Compensation Remand Proceeding"), Reply Comments of Verizon Communications at 7; Reply Comments of BellSouth Corporation at 7; Reply Comments of Qwest Corporation at 12; see also Reply Comments of SBC Communications, Inc. at 14 (all reply comments dated Aug. 4, 2000).

traffic should be treated as intrastate traffic for separations purposes. The anticompetitive impact of the glaring inconsistency of that position could not be more obvious. Their logic is simply this: treat ISP-bound traffic as local when it benefits ILECs, but don't treat ISP-bound traffic as local when it benefits CLECs. Pac-West and RCN assert that in this proceeding, as well as in the Commission's proceeding on the remand of its *Dial-up Order* regarding reciprocal compensation for ISP-bound traffic, all ISP-bound traffic should be treated as local, intrastate traffic for regulatory purposes, including jurisdictional separations.

There are other reasons not to allocate any of the costs of ISP-bound traffic to the interstate jurisdiction at this time. First and foremost, it is not possible to accurately gauge what that allocation should be, if there should be one at all. Verizon and Qwest acknowledge that there is no reliable way to measure minutes attributable to Internet traffic.<sup>7</sup> Only SBC dares to report an estimate of Internet-bound minutes, but the figures reported by SBC lack any support and therefore cannot be considered credible. SBC describes the underlying data as based on "identifiable Internet traffic,"<sup>8</sup> yet fails to explain how it is identifying that traffic when the other RBOCs claim that Internet traffic cannot be identified. Further, SBC's Exhibits A and B are incomprehensible, and the "Total" categories have no apparent relation to the other data in the tables. Absent a more thorough explanation of its data, SBC's figures must be disregarded and cannot serve as the factual basis for the Commission to make any decision.

---

<sup>7</sup> Verizon Comments at n.4 ("Verizon does not separately track internet minutes. Indeed, there is no direct way for it to do so."); Qwest Comments at 8-9 (Qwest "does not have measurement capability in place to determine the share of total MOU which is represented by Internet usage. As a result, it cannot directly attribute the increase in local DEM to Internet usage or any other specific cause. The cost and administrative burden of measuring such traffic for separations purposes would far outweigh any potential benefits.")

<sup>8</sup> Comments of SBC Communications, Inc. at n.4.

Moreover, all of the comments that support a reallocation of local minutes to the interstate jurisdiction to reflect Internet usage presume that all Internet traffic should be considered jurisdictionally interstate. In the *Dial-up Order*, the Commission ruled that ISP-bound traffic was jurisdictionally *mixed*, but *largely* interstate.<sup>9</sup> This conclusion was based entirely on conjecture because the Commission never actually examined the proportion of information service traffic that was derived from servers located inside or outside particular states. Indeed, the record in the *Dial-up Order* proceeding demonstrates that the actual percentage of local holding time minutes on calls to ISPs is significantly below 10%.<sup>10</sup> Further, there is no reliable way to determine a percentage of ISP-bound traffic that would be interstate on a nationwide basis. Some states with a disproportionate share of population and web hosting services, such as California, would have a significantly different percentage of Internet traffic that would be intrastate than other states with smaller populations and fewer web hosting service providers. There is no sound reason to presume that all ISP-bound traffic should be allocated to the interstate jurisdiction under the Commission's end-to-end analysis used in the *Dial-Up Order*.

Finally, because telecommunications services provided to an ISP terminate when traffic is delivered to the ISP, dial-up services to ISPs should be considered jurisdictionally intrastate.<sup>11</sup> The entire issue of the treatment of ISP-bound traffic for

---

<sup>9</sup> *Dial-Up Order* at para. 1.

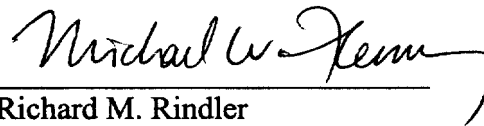
<sup>10</sup> See Comments of WorldCom, Inc. at 25, *Reciprocal Compensation Remand Proceeding*, citing Hyperion Study of Internet Traffic, attached to Reply Comments of Hyperion Telecommunications, Inc., on Petitions for Reconsideration, *In re GTE Telephone Operating Cos.*, GTOC Tariff FCC No. 1, GTOC Trans. No. 1148, CC Docket No. 98-79 (Jan. 19, 1999). The Hyperion Study tracked the Internet usage of several University of Pittsburgh students by requiring them to log all websites they visited over the sample period. Carriers cannot be expected to conduct such labor intensive studies to determine the jurisdictional nature of traffic to ISPs.

<sup>11</sup> See Testimony of Fred Goldstein on Behalf of Pac-West Telecomm, Inc. at 9 (Jul. 14, 2000), filed as Attachment B to Reply Comments of Pac-West Telecomm, Inc. and Connect Communications Corporation Related to Remand of the Commission's Reciprocal Compensation ISP Ruling by the U.S. Court of Appeals for the D.C. Circuit (Aug. 7, 2000), *Reciprocal Compensation Remand Proceeding*.

separations purposes would be mooted by a clear and consistent ruling that local ISP-bound dial-up is jurisdictionally intrastate.

For all of the foregoing reasons, the Commission should do as the Joint Board recommends and not address the treatment of Internet traffic in this proceeding. Accordingly, the Commission should not adjust the DEM factor as the Joint Board has proposed to do.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Michael W. Fleming", is written over a horizontal line.

Richard M. Rindler  
Michael W. Fleming  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3000 K Street, NW  
Washington, DC 20007  
(202) 424-7771

Dated: October 10, 2000

Counsel for Pac-West Telecomm, Inc. and RCN  
Telecom Services, Inc.

## CERTIFICATE OF SERVICE

I, Carolyn W. Shaw, hereby certify that a copy of the foregoing Reply Comments of Pac-West Telecomm, Inc. and RCN Telecom Services, Inc. was served this 10<sup>th</sup> day of October, 2000, by 1<sup>st</sup> class mail, postage pre-paid upon the following:

Magalie Roman Salas, Esq.\*  
Secretary  
Federal Communications Commission  
The Portals  
445 12<sup>th</sup> Street, S.W.  
12<sup>th</sup> Street Lobby, TW-A325  
Washington, D.C. 20554

International Transcription Service, Inc.\*  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036 (w/diskette)

The Honorable William E. Kennard,\*  
Chairman, Federal Joint Board Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

The Honorable Susan Ness, Commissioner\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

The Honorable Michael K. Powell,\*  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

The Honorable Joseph P. Mettner,  
Commissioner  
Wisconsin Public Service Commission  
P.O. Box 7854  
Madison, WI 53707-7854

The Honorable Diane Munns,  
Commissioner  
Iowa Utilities Board  
350 Maple Street  
Des Moines, IA 50319-0069

The Honorable Joan H. Smith,  
Commissioner  
Oregon Public Utility Commission  
550 Capitol Street, N.E., Suite 215  
Salem, OR 97310-2551

The Honorable Thomas L. Welch,  
Chairman, State Joint Board Chairman  
Maine Public Utilities Commission  
State House Station #18  
242 State Street  
Augusta, ME 04333

Stephen Burnett \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
Division  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

William Cox, Federal Joint Board Staff \*  
Chairman  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
Division  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Andrew Firth \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Genaro Fullano \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Robert Loube \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
Division  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Richard Robinson \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting  
Safeguards Division  
445 12<sup>th</sup> Street, S.W., Room 6-C160  
Washington, D.C. 20554

Gary Seigel \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
Division  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Sheryl Todd \*  
Federal Communications Commission  
Common Carrier Bureau, Accounting Policy  
Division  
445 12<sup>th</sup> Street, S.W., Room 5-B540  
Washington, D.C. 20554

M. Robert Sutherland  
Richard M. Sbaratta  
Helen A. Shockey  
1155 Peachtree Street, N.E.  
Suite 1700  
Atlanta, Georgia 30306-3610

Lawrence E. Sarjeant \*  
Limda L. Kent \*  
Keith Townsend \*  
John W. Hunter \*  
Julie E. Rones \*  
The United States Telecom Association  
1401 H Street, N.W., Suite 600  
Washington, D.C. 20005

James T. Hannon  
Quest Corporation  
1020 19<sup>th</sup> Street, W.W., Suite 700  
Washington, D.C. 20036

Edward Shakin  
Michael E. Glover  
Verion Telephone Companies  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201

Paul E. Dorin  
Roger K. Toppins  
Paul Mancini  
SBC Communications, Inc.  
1401 I Street, N.W., 11<sup>th</sup> Floor  
Washington, D.C. 20005

David Cosson  
Kraskin, Lesse & Cosson, LLP  
2120 L Street, N.W., Suite 520  
Washington, D.C. 200036

Richard A. Askoff  
Joe A. Douglas  
National Exchange Carrier Association, Inc.  
80 South Jefferson Road  
Whippany, NJ 07981

L. Marie Guillory  
Daniel L. Mitchell  
National Telephone Cooperative Association  
4121 Wilson Boulevard  
Tenth Floor  
Arlington, VA 22203

Margot Smiley Humphrey  
National Rural Teleom Association  
2000 K Street, N.W., Suite 200  
Washington, D.C. 20006

Stuart Polikoff  
Organization for The Promotion and  
Advancement of Small Telecommunications  
Companies  
21 Dupont Circle, N.W.  
Suite 700  
Washington, D.C. 20036

Mark C. Rosenblum  
Judy Sello  
AT&T Corporation  
295 North Maple Avenue, Room 1135L2  
Basking Ridge, NJ 07920

Conley L. Cathry  
President - Industry Relations  
2711 LBJ Freeway, Suite 560  
Dallas, TX 75234

Kenneth T. Burchett, Vice President  
GVNW Consulting, Inc.  
8050 SW Warm Springs Street  
Tualatin, OR 97062

Emmanuel Staurulakis, President  
John Staurulakis, Inc.  
6315 Seabrook Road  
Seabrook, MD 20706

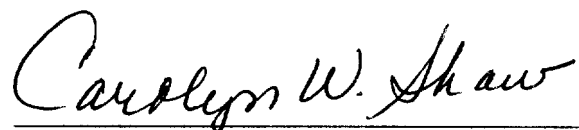
Chris Barron  
TCA, Inc. - Telcom Consulting Associates  
1465 Kelly Johnson Blvd., Suite 200  
Colorado Springs, CO 80920

George Young, Esq.  
Vermont Public Service Board  
112 State Street  
Montpelier, VT 05602

Matthew Totino  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

George N. Barclay  
Michael J. Ettner  
General Services Administration  
Personal Property Division  
1800 F Street, N.W., Room 4002  
Washington, D.C. 20405

Alan Buzacott  
WorldCom, Inc.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006



Carolyn W. Shaw

**\*Hand Delivery**